APPENDIX

Revenue Act of 1936, c. 690, 49 Stat. 1648:

SEC. 14. SURTAX ON UNDISTRIBUTED PROFITS.

(a) *Definitions.*—As used in this title—

(1) The term "adjusted net income" means the net income minus the sum of—

(A) the normal tax imposed by section 13.

(B) The credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations.

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(2) [as amended by Sec. 501 (a) (1) of the Revenue Act of 1942, c. 619, 56 Stat. 798] The term "undistributed net income" means the adjusted net income minus the sum of (A) the dividend paid credit provided in section 27, (B) the credit provided in section 26 (c) relating to restrictions on payment of dividends, (C) except in cases where section 26 (c) (1) is applicable, the deficit credit provided in section 26 (f), and (D) the redemption credit provided in section 26 (g).

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SEC. 26. CREDITS OF CORPORATIONS.

In the case of a corporation the following credits shall be allowed to the extent provided in the various sections imposing tax—

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(c) *Contracts Restricting Payment of Dividends.*—

(1) *Prohibition on Payment of Dividends.*—An amount equal to the excess of

the adjusted net income over the aggregate of the amounts which can be distributed within the taxable year as dividends without violating a provision of a written contract executed by the corporation prior to May 1, 1936, which provision expressly deals with the payment of dividends. If a corporation would be entitled to a credit under this paragraph because of a contract provision and also to one or more credits because of other contract provisions, only the largest of such credits shall be allowed, and for such purpose if two or more credits are equal in amount only one shall be taken into account.

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SEC. 27. CORPORATION CREDIT FOR DIVIDENDS PAID.

(a) *Dividends Paid Credit in General.*—For the purposes of this title, the dividends paid credit shall be the amount of dividends paid during the taxable year.

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(e) *Taxable Stock Dividends.*—In case of a stock dividend or stock right which is a taxable dividend in the hands of shareholders under section 115 (f), the dividends paid credit with respect thereto shall be the fair market value of the stock or the stock right at the time of the payment.

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(h) *Nontaxable Distributions.*—If any part of a distribution (including stock dividends and stock rights) is not a taxable dividend in the hands of such of the shareholders as are subject to taxation under this title for the period in which the distribution is made, no dividends paid credit shall be allowed with respect to such part.

Remington's Revised Statutes of Washington, 1940 Annual Pocket Part for Volume 5:

§ 3803–24. *Capital carried as liability—Computation—Dividends how Paid.*

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4. No corporation shall pay dividends,

a. in cash or property, except from the surplus of the aggregate of its assets over the aggregate of its liabilities, including in the latter the amount of its capital stock, after deducting from such aggregate of its assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets;

b. in shares of the corporation, except from the surplus of the aggregate of its assets over the aggregate of its liabilities, including in the latter the amount of its capital stock.

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6. Subject to the limitations contained in this section, a dividend may be declared in shares of the corporation whenever the board of directors so determine: *Provided,* That

a. if the dividend is to be paid in shares having a par value, the aggregate par value of such shares shall not exceed the amount of that portion of the corporation's surplus which is transferred to capital as payment for such shares;

b. if the dividend is paid in shares having no par value, the number of such shares may be fixed by the board of directors;

c. no dividend payable in shares of any class shall be paid to shareholders of any other class unless the articles so provide or such payment is authorized by the vote of the holders of a majority of the shares of

the class in which the payment is to be made [L. '33, p. 785, § 24].

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§ 3803–37. *Amendment of articles.*

1. A corporation may, at a meeting of the shareholders duly called upon notice of the specific purpose, and in the manner herein provided, amend its articles in any respect so as to include any provision authorized by this act, or so as to extend the period of its duration for a further definite time or perpetually.

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3. An amendment altering the articles of incorporation in any other respect may be adopted by vote of the holders of two-thirds of the voting power of all shareholders, or by such vote as the articles of incorporation require.

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5. Any amendment which might be adopted at a meeting of [a] shareholders as provided in this section, may be adopted without such a meeting being held if written consent to the amendment has been given by all shareholders entitled to vote thereon as provided in this section [L. '33, p. 798, § 37].

§ 3803–38. *Amendatory articles—Certificate.*

I. After an amendment has been adopted, articles of amendment shall be prepared in triplicate originals, setting forth the amendment and the adoption thereof, and shall be signed and sworn to by the president or vice-president and the treasurer or secretary or assistant secretary.

II. The triplicate originals of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of

State finds that the articles of amendment conform to law, he shall put an endorsement of his approval upon each set, and when all taxes, fees and charges therefor have been paid as required by law, he shall file one of such sets in his office and record the same and shall issue a certificate of amendment. Thereupon the amendment shall become effective.

III. The certificate of amendment together with the two remaining sets of the articles of amendment bearing the endorsement of the fact and time of filing in the office of the Secretary of State shall be returned to the corporation. One of the sets of the articles of amendment shall then be filed in the office of the Auditor of the county in which the registered office of the corporation is located, and the other shall be retained by the corporation [L. '39, ch. 143, § 6, p. 430, amending L. '33, ch. 185, § 38].

§ 3803–39. *Increase or decrease of shares.*

1. If the total number of shares is to be increased or decreased the articles of amendment shall also state:

a. the total number of shares, including those previously authorized, which the corporation will thenceforth be authorized to have;

b. the number of shares that have a par value and the par value thereof, and the number of shares that have no par value, and

c. if shares are divided into more than one class, a description of the classes and a statement of the number of shares in each class and of the relative rights, voting power, preferences and restrictions granted to or imposed upon the shares of each class.

2. If shares having a par value are to be changed into an equal or different number of shares having no par value, the amount of the consideration for which shares having no par value are allotted to take the place of outstanding shares having a par value shall be deemed to be the amount of the aggregate par value of such outstanding shares, or, if the actual value of such shares be less than their par value, the consideration may be stated in the articles of amendment to be their actual value.

3. If shares having no par value are to be changed into an equal or different number of shares having a par value, the shares having a par value which are allotted to take the place of outstanding shares having no par value shall be taken to be fully paid for, but the aggregate par value of such shares shall not exceed the actual value of the assets of the corporation, less its liabilities, represented by the shares having no par value so exchanged.

4. If shares having no par value are to be changed into a different number of the same class or of any other class or classes of shares having no par value, the corporation shall be deemed to have received for such new shares as represent or take the place of such outstanding shares the amount of the capital of the corporation represented by the outstanding shares so changed [L. '33, p. 800, § 39].

Treasury Regulations 94, promulgated under the Revenue Act of 1936:

ART. 26–2. *Credit in connection with contracts restricting payment of dividends.*—

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(b) *Prohibition on payment of dividends.*—The credit provided in section 26 (c) (1) is allowable only with respect to a written contract executed by the corporation prior to May 1, 1936, which expressly deals with the payment of dividends and operates as a legal restriction upon the corporation as to the amounts which it can distribute within the taxable year as dividends. If an amount can be distributed within the taxable year as a dividend—

(1) in one form (as, for example, in stock or bonds of the corporation) without violating the provisions of a contract, but can not be distributed within the taxable year as a dividend in another form (as, for example, in cash) without violating such provisions, or

(2) at one time (as, for example, during the last half of the taxable year) without violating the provisions of a contract, but can not be distributed as a dividend at another time within the taxable year (as, for example, during the first half of the taxable year) without violating such provision—

then the amount is one which, under section 26 (c) (1), can be distributed within the taxable year as a dividend without violating such provisions.

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